IN THE HIGH COURT OF BOMBAY AT GOA
****

FIRST APPEAL NO. 26 OF 1996

Balkrishna S. Naik Gaunkar,
aged about 49 years,
landlord, r/o Chaudi,
Canacona, Goa. .... Appellant

Versus

1. Anand Dessai,

2. Vishnu Phal Dessai,

3. Bhuto S. Dessai (since deceased through L.Rs.):-

3(a). Smt. Kunda Subhash Prabhu Dessai, major, d/o respondent no.3 and her husband

3(b). Shri Subhash Prabhu Dessai, both 3(a) and 3(b) r/o Kotombi Taluka, Quepem, Goa,

3(c). Smt. Shilan Prabhakar Porobo, daughter, major in age, and her husband,

3(d). Shri Prabhkar P. Porobo, both 3(c) and 3(d) r/o Housing Board, Plot No.8. Sakhali, Goa,

3(e). Smt. Jeevan Sadanand Dessai, daughter, major in age, and her husband,

3(f). Shri Sadanand Dessai, both 3(e) and 3(f) r/o Deva Mol, Kalem, Sanguem Taluka, Goa,

3(g). Smt. Nalini Umesh Dessai, daughter, major in age, and her husband,

3(h). Shri Umesh Dessai, both 3(g) and 3(h), residing at Sidhinagar, Cuncolim, Salcete, Goa,

3(i). Smt. Milan Apaji Patil,
daughter, major in age,
and her husband,

3(j). Shri Apaji Patil,

3(k) Miss Anita Bhutto Dessai,
daughter, major in age,

3(l). Miss Saria Bhutto Dessai,
daughter, major in age,
and

3(m). Shri Prasanna Bhutto Dessai,
son, major in age, all
3(i),3(j), 3(k), 3(l) and
3(m) r/o H.No.1115, Kinlem,
Canacona, Goa,

4. Satyawati Dessai, and

5. Salu Balu Dessai. .... Respondents.

Shri Shivan Dessai, advocate for the appellant.

Shri D. P. Bhise, advocate for respondents.

CORAM : S. A. BOBDE, J.

DATE : 11th June, 2004.

ORAL JUDGMENT

This appeal by one Balkrishna S. Naik Gaunkar is directed against the judgment dated 25th September, 1995, in Land Acquisition Case No.173 of 1988 rendered in a reference under Section 30 of the Land Acquisition Act, 1894. The appellant Balkrishna S. Naik Gaunkar claimed apportionment of compensation for the acquisition of land under survey no. 272/1. Compensation has been awarded in respect of the suit land to the respondent nos. 1 to 5.

2. It is the appellant's case that he has a 1/5th share in the land and a better title than the respondents.

He, therefore, sought a reference which was made to and decided by the District Judge, South Goa. In the first instance, the learned lower court found that the appellant had made out a claim in respect of the acquired land which he believed was called "Vello" or "Podiar". The learned District Judge, therefore, declined to consider the documentary evidence produced by the appellant in respect of the acquired land which is in fact under survey no. 272/1 and is known as "Sodentil" or "Ambeafondi".

3. The learned District Judge, however, considered part of the documentary evidence, such as Form No. III produced by the appellant, purporting to show his title in the acquired survey no. 272/1. He appears to have got his name included in the said Form III. However, the respondents filed an appeal against the inclusion of his name. Since the appeal was pending, the learned Judge granted 1/5th share of compensation to the appellant, subject to the final outcome of the appeal before the Deputy Collector. It is no longer in dispute that the appeal has been decided on 25th March, 2003, and it has been held by the Appellate Authority that the appellant is not entitled to have his name included in Form III in respect of survey no. 272/1, i.e. the acquired land, which is known as "Ambeafondi".

4. The learned counsel for the appellant submitted

that the learned lower court has wrongly ignored the evidence produced by the appellant, such as land registration document and matriz document. These documents, which are on record, show that a landed property known as "Ambeafondi" under no. 2847, is owned, amongst others, by one Custam Bicaro Naique. This document also shows that it is owned by about four other persons. According to the learned counsel, this Custam Bicaro Naique is the father of his maternal grandmother one Abolim and, therefore, this documentary evidence ought to have been construed as demonstrating title to the acquired land in favour of the appellant. The learned counsel also relied on the matriz document in respect of the said land in which one Abolim Custam Naique is shown to be the 1/4th owner of the rustic property known as "Ambeafondi". According to the learned counsel, there is no dispute and in fact it is even admitted by the respondents, that Abolim was his maternal grandmother and her father was Custam Naique and, therefore, the very fact that Custam's name appears in the land registration documents demonstrates the appellant's title to the property.

5. It is not possible to accept this contention on behalf of the appellant. The land registration document which is placed on record as a translation of the original Portuguese document, shows that there are about four owners of the land which was known as "Ambeafondi", one of whom was

Custam Naique. It is not possible to determine from that document whether the acquired land i.e. the land under survey no.272/1 was that part of "Ambeafondi" which belonged to Custam Naique. Moreover, assuming that Custam had a daughter called Abolim, whose name appears as 1/4th owner of the property generally known as "Ambeafondi", it is not possible to deduce from this matriz document that she inherited that part of "Ambeafondi" which is the acquired land. The appellant has not established even on a balance of probability, that survey no.272/1, which is the acquired land was that part of "Ambeafondi" owned by Custam Naique and which was inherited by his daughter Abolim and that after Abolim, it was inherited by her daughter's son, who is said to be the appellant. I am of the view that even if the land registration document and the matriz document are taken into account, they do not establish the appellant's title over the said land. The learned counsel for the appellant also submitted that the description of the property in the matriz is similar to the description of the acquired land, in the sense that the boundaries of both lands appear to be mountains of the comunidade, but from this factor alone, for the reasons stated above, the appellant's right in the said property cannot be established.

6. In fact, it does not appear, as contended by the learned counsel for the appellant, that the appellant mistakenly claimed compensation for a property known as

"Vello" or "Podiar", but actually ought to have claimed it for "Ambeafondi". Whether the appellant has been able to make out a case in respect of "Vello", is no longer relevant since the appellant admits that he claimed compensation for the property known as "Vello", by mistake. The fact remains that the appellant has not been able to demonstrate his right in the adjoining property, which is admittedly acquired, i.e. "Ambeafondi" under survey no. 272/1. Thus, it is clear that neither the land registration document, nor the matriz document establish the appellant's right to the suit property. The documents in Form III do show the appellant's name as one of the owners in the property and the learned District Judge rightly made the appellant's right to receive compensation subject to the outcome of the appeal filed by the respondents against the inclusion of the appellant's name in the said property. However, that appeal has been dismissed and the inclusion of the appellant's name in Form III stands cancelled. As a result, there is no reliable evidence of the appellant's ownership in respect of the acquired land, i.e. survey no. 272/1 of "Ambeafondi".

7. There is no merit in this appeal which is hereby dismissed.

S. A. BOBDE, J.

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